

PLAINTIFF'S PROPOSED INSTRUCTION NO. 11 – UNFAIR TRADE PRACTICES – UNFAIR ACT DEFINED

In deciding whether an act or practice is unfair, you should consider the following factors:

- (1) whether the act or practice offends public policy, that is, whether it falls within some existing concept of unfairness that society has established through law or otherwise;
- (2) whether the act or practice is immoral, unethical, oppressive, or unscrupulous; and
- (3) whether the act or practice causes substantial injury to consumers. “Substantial injury” is injury that is not trivial or speculative, but involves monetary harm or unwarranted health and safety risks. Substantial injury can occur if a relatively small amount of harm is inflicted on a large number of consumers, or if a greater harm is inflicted on a relatively small number of consumers.

Unfairness may be found because of the degree to which the act or practice meets one or more of these factors. An act or practice may be unfair even though it is not deceptive.